

REMARKS

Status of the Claims

Claims 1, 3-8, 54-57 and 72-98 are currently pending. Claims 2, 9-53 and 58-71 are cancelled. Claims 88, 90, 91, 97 and 98 are currently amended.

Decision

The Board reversed the Examiner's rejection of claims 1, 3-8, 54-57 and 72-98. The Board entered a new ground of rejection on claims 88-91 97 and 98.

Argument

The Applicant requests that the Examiner allow claims 1, 3-8, 54-57 and 72-98 for the reasons articulated by the Board.

The Board rejected claims 88-91, 97 and 98 under 35 U.S.C. § 101 on the grounds that these claims were directed "to non-statutory subject matter as they encompassed an abstract idea." The Board stated, "[t]he factors relevant in this case are the lack of an express or implied recitation in the claims to a particular machine or transformation and that the claims are a mere statement of a general concept" (Decision pg. 10). The Board further suggested that the claim language "using a computing system" to perform the step of determining that the first target is unavailable was nominal use that did not impose meaningful limits on the scope of the claim (Decision pg. 11).

Claims 88, 90, 91, 97 and 98 are currently amended to overcome these rejections. For example, amendments to Claim 88 are intended to closely tie the method to the use of a computing system having specific computing instructions thereon. These amendments require much more than nominal use of the computer, impose meaningful limits on the amended claims, and thus make the claims patentable under 35 U.S.C. § 101.

The Applicant believes that all pending claims are allowable and respectfully requests that the Examiner issue a Notice of Allowance. Should the Examiner have questions, the Applicant's undersigned representative may be reached at the number provided below.

RESPECTFULLY SUBMITTED,
BRADLEY S. TEMPLETON

Date: September 19, 2011

By: 

Steven M. Colby, Reg. No. 50,250
PETERS VERNY, LLP
425 SHERMAN AVE. SUITE 230
PALO ALTO, CA 94306
650-324-1677